IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 565 of 2004

M/s K M A Limited ... petitioners
vs
Appellate Authority for BIFR & ors... respondents
and
Mr Ramaiah Reddy .. Purchaser
and
M/s RSJ Mega Hotels Pvt Ltd... Applicants
with
NOTICE OF MOTION NO.597 OF 2004
M/s KMA Limited .... Petitioners
vs
Appellate Authority BIFR and ors.. respondents
and
Mohsin Shariff Educational and Charitable Trust ..Applicants
with
NOTICE OF MOTION NO OF 2004
M/s K M A Limited ... Petitioners
vs
Appellate Authority BIFR and or.. respondents
and
N A Haris of Nalapad Group and anr.. Applicants
in
WRIT PETITION NO. l5l2 of 2002
M/s K M A Limited ... Petitioners
vs
Appellate Authority BIFR and ors.. respondents

Mr Anand Grover with Ms F Moosa i/b Prakash Mohadia for petitioners

Mr E D'vitre with Mr M S Doctor, Ms Aziza Khatri i/b M/s Hariani and co for Purchasers

Mr.J S Saluja i/b M V Kini and co for respondent nos 3,5,6, and 7

Mr. M P S Rao, V.S.Bodke i/s Chitnis Vaithy and co for applicants in notice of motion no.476 of 2003

Mr Shailesh Shah with I A Nasikwala for applicants
Mr.Pravin Samdani i/b Ms U M Jhaveri for intervener purchaser

CORAM: A.P.SHAH & S.C.DHARMADHIKARI JJ.

DATED 20.l0.2004

P.C.:

l The petitioner M/s K M A Limited was declared as a sick company under section l5 of the SICA Act on 24.6.l99l. In l993 the management of the company was handed over to the workers society. The company, however, went into losses and ceased functioning in l998. The attempts for revival of the company failed and ultimately the BIFR recommended winding up of the company. The order of the BIFR was confirmed in appeal by the AAIFR. The company filed the present petition challenging the orders of the BIFR and AAIFR . By an interim order dated 28.l2.2002 the Division Bench directed to sell all the movable and immovable property belonging to the petitioner company and for that purpose constituted an Asset Sale Committee, the Bank of Baroda being the Convener. Pursuant to the order of this court the Asset Sale Committee put to auction the company's property at Bangalore. As per the conditions of the auction bidders were required to make earnest money deposit of l% bid amount alongwith the bid. The successful bidder was also required to pay 25% of the bid amount within 60 days of the acceptance of the bid and the balance within 6 months. In all 38 bids were

received for the Bangalore property . All the bidders were given opportunity to enhance their bids by the Asset Sale Committee. The bid of Shri Ramaiah Reddy of Rs.l3.56 crores was the highest bid. Shri Reddy enhanced the bid to Rs.l3.80 crores and the said bid was accepted by the Division Bench. and the sale was confirmed in his favour vide order dated l3.2.2004. Shri Reddy has already deposited 25% of the said bid amount within 60 days as per conditions of the sale and balance amoiunt is yet to be deposited.

2. It appears that one M/s RSJ Mega Hotels Pvt Ltd (Applicants in Notice of Motion No. 565 of 2004) had offered bid of Rs.l9,84,l4,500 for Bangalore property but the bid was not accompanied by l% bid amount. It is their case that they visited Bank of Baroda, 42 Cawasji Patel Street, Mumbai on 26.8.2003 to participate in the auction but bidding did not take place on that day. It appears that they had thereafter addressed letters dated l0.8.2003 and 5.9.2003 to the Asset Sale Committee reiterating their offer of Rs.l9,84,l4,500. It is an admitted position that the offer of M/s RSJ Mega Hotels Pvt Ltd was not brought to the notice of this court by the Asset Sale Committee at the time of confirmation of the sale. M/s RSJ Mega Hotels

Pvt Ltd have taken out Notice of Motion No 656 of 2004 for setting aside the sale in favour of Shri Reddy and for accepting their offer of Rs.l9,84,l4,500. At this stage we may mention that two other parties viz (i) N A Haris of Nalapad Group and Jawahar Gopal and (ii) Moshin Shariff Educational and Charitable Trust also took out Notice of Motions giving offer of Rs.20 crores for Bangalore property. M/s RSJ Mega Hotels Pvt Ltd and N H Haris of Nalapad Group and Jawahar Gopal deposited with the Prothonotary and Senior Master bank draft/bankers cheque for Rs l0 crores in furtherance of their offer to buy the property. During the course of hearing M/s N A Haris of Nalapad Group and Jawahar Gopal have enhanced their offer to Rs.40.50 crores on as is where is basis.

3. Ordinarily there should be finality to a public auction sale, but in the present case it is noticed that the offer given by Shri Reddy is grossly inadequate in comparison to the subsequent offers given by the applicants. In such circumstances when the correct market value of the property was not known to the court and the sale was confirmed at grossly inadequate price this court would be constrained to review the order of confirmation of sale. The offer given by N A Haris of Nalapad

Group and Jawahar Gopal is three times higher than the price at which the sale was confirmed. It is true that there is a gap of around 6 months between the confirmation of auction sale and the subsequent offers given by the third parties but the said offers are much higher and although it is faintly suggested by the learned counsel for purchaser that there was sudden spurt in price of real estate in Bangalore during this period, we are of the opinion that in the facts and circumstances of the case the auction sale which was confirmed on l3.2.2004 is liable to be set aside. It is well settled that the purpose of auction sale is to get the most remunerative price and it is the duty of the court to satisfy itself that the price fixed is the best that would be expected to be offered. It would be not only proper but necessary that the court must ensure that the price fetched at the auction is an adequate price even though there is no suggestion of irregularity or fraud. We may hasten to add that Shri Saluja appearing for the Asset Sale Committee and Shri Grover appearing for the company have categorically submitted that the sale in favour of Shri Reddy should be set aside in view of the subsequent offers.

4. Shri D'vetre, learned counsel appearing for the purchaser Shri Reddy strenuously submitted that when the auction sale was confirmed by this court after applying its mind to the relevant considerations before it while accepting the final bid,no probe is permissible solely on the basis of the subsequent offers especially when there is no allegation of fraud or material irregularity in the conduct of the auction sale and mere inadequacy of price is no ground for setting aside the court sale. The learned counsel drew our attention to the following observations of the Supreme Court in M/s Navalkha and Sons vs Sri Ramanya Das and ors,

l969(3) SCC 537;

> "The principles which should govern confirmation of sales are well established. Where the acceptance of the offer by the Commissioner is subject to confirmation of the Court the offeror does not by mere acceptance get any vested right in the property so that he may demand automatic confirmation of his offer. The condition of confirmation by the Court operates as a safeguard against the property being sold at

inadequate price whether or not it is a consequence of any irregularity or fraud in the conduct of the sale. In every case, it is the duty of the court to satisfy itself that having regard to the market value of the property the price offered is reasonable. Unless the court is satisfied about the adequacy of the price the act of confirmation of the sale would not be a proper exercise of judicial discretion. In Gordhan Das Chuni Lal vs T Sriman Kanthimathinatha Pillai, AIR l92l Mad 286 it was observed that where the property is authorized to be sold by private contract or otherwise it is the duty of the court to satisfy itself that the price fixed is the best that could be expected to be offered. That is because the court is the custodian of the interests of the company and its creditors and the sanction of the court required under the Companies Act has to be exercised with judicial discretion regard

being had to the interests of the company and its creditors as well. This principle was followed in Rathnaswami Pillai vs. Sadapathi Pillai, AIR l925 Mad 3l8 and S Soundarajan v M/s Roshan and Co, AIR l940 Mad 42. In A Subbaraya Mudaliar vs K Sundarajan, AIR l95l Mad l986 it was pointed out that the condition of confirmation by the court being a safeguard against the property being sold at an inadequate price, it will be not only proper but necessary that the court in exercising the discretion which it undoubtedly has of accepting or refusing the highest bid at the auction held in pursuance of its order,should see that the price fetched at the auction is an adequate price even though there is no suggestion of irregularity or fraud. It is well to bear in mind the other principle which is equally well settled namely that once the court comes to the conclusion that the price offered is adequate, no

subsequent higher offer can constitute a valid ground for refusing confirmation of the sale or offer already received".

(emphasis supplied)

The aforesaid observations are of no assistance to Mr. D'vetre and on the contrary emphasis is that the court is duty bound to ensure that best price is fetched in the auction.

5. Mr D'vetre also drew our attention to the decision of the Supreme Court in M/s Kayjay Industries Ltd vs. M/s Asnew Drums (P) Ltd and ors, (l974) 2 SCC 2l3. In that case the Maharashtra State Finance Corporation had given a loan and on borrower committing default the property was put to auction sale under section 3l of the State Finance Corporation Act, l95l. According to the valuer, the value of the judgment debtor's property was Rs.l7,48,096. The properties were put to auction several times but they had to be cancelled because the bids were considered to be inadequate. Ultimately fresh auction was held securing highest bid of Rs.l0.65 lacs from the appellants who, after the court's persuasion,

raised the offer to Rs.ll.50 lacs The High Court however, set aside the sale in appeal on the ground that the sale price was far less than the valuer report. In this context Krishna Iyer J. speaking for the Bench observed:

> " The court may consider the fair value of the property, the general economic trends, the large sum required to be produced by the bidder, the formation of a syndicate, the futility of postponements and the possibility of litigation, and several other factors dependent on the facts of each case.Once that is done, the matter ends there. No speaking order is called for and no meticulous post mortem is proper. If the court has fairly, even if silently, applied its mind to the relevant considerations before it while accepting the final bid, no probe in retrospect is permissible. Otherwise, a new threat to certainty of court sales will be introduced."

6. Shri D'vetre also relied upon the decision in Rajender Singh vs Ramdhar Singh and ors, (200l) 6 SCC 2l3 where the court observed that in the absence of any fraud or material irregularity in the conduct of the court's auction sale, mere inadequacy of the price is not a ground for setting aside the court sale. None of these decisions are applicable to the facts and circumstances of the present case where the price at which the property was sold in the public action is not only grossly inadequate but is unconscionable. Shri Saluja and Shri Grover brought to our notice the decision of the Supreme Court in Divya Manufacturing Company (P) Ltd vs. Union of India, (2000) 6 SCC 69 . In that case the property was put to auction by the Company Judge in a winding up proceeding. The offer given by the appellant was Rs.37 lacs which was increased to Rs.85 lacs and the learned single Judge accepted the offer of the appellant. The Division Bench however, directed fresh auction wherein the appellant gave offer of Rs.l.30 crores which came to be confirmed. Shortly, thereafter two other parties offered Rs.l.40 crores and Rs.2 crores respectively. They also offered to deposit 20% of the amount. The Division Bench therefore set aside earlier sale and fresh sale was ordered.

This order was challenged before the Supreme Court by the auctiion purchaser. The court while dismissing the appeal observed:

> " In our view, on facts it is apparent that the Division Bench of the High Court has considered all the relevant facts including the facts at the initial stage, the appellant Divya offered only Rs.37 lacs to purchase the properties. That means, the appellant wanted to purchase at a throw away price. Thereafter at the intervention of the court, the price was increased to Rs.l.3 crores by the appellant. This indicates that the appellant was keen to purchase the property, however, by paying only the bare minimal amount and to take advantage of the sale by the Liquidator in the hope that if there are no other purchaser, it would purchase the company at a price which is abnormally below the market price. It is also true that on 2.7.l998,

the offer made by the appellant was accepted and it was ordered that sale in its favour be confirmed,but at the same time, before possession of the property could be handed over, or before the sale deed could be executed in its favour. Respondent nos. 7 and 8 pointed out that the assets and properties could be sold at Rs.2 crores. For showing their bonafides, they were directed to deposit Rs.40 lacs each and also to Rs.70 thousand each as damages to te appellant. Further, the application for setting aside the sale was filed within a few days of the order accepting the bid of the appellant. In this set of circumstances, when correct market value of the assets was not properly known to the court and the sale was confirmed at a grossly inadequate price, it was open to the court to set it at naught in the interest of the company, its secured and unsecured creditors and its employees. The appellant is also

duly compensated by payment of Rs.70 thousand each by respondent nos 7 and 8". (emphasis supplied)

7. In light of the principle laid down in Divya's case and in the circumstances of the case we pass following order:

i) The sale in favour of Shri Ramaiya Reddy is set aside and cancelled.

ii) The offer of N A Haris of Nalapad Group and Jawahar Gopal of Rs.40,50,00,000 (Rupees forty crores fifty lacs only) is provisionally accepted subject to following:

a) The Asset Sale Committee is directed to issue advertisement in Times of India and Indian Express Bombay (Bangalore editions) inviting bids for sale of subject Bangalore property by or before 8h November 2004. The offers should be received by the Asset Sale Committee by or before 20th November 2004.

b) The reserved bid shall be fixed by the Asset Sale Committee at Rs.40,50,00,000/-

(Rupees forty crores fifty lacs only). The earnest money shall be fixed at Rs.l0,00,00,000 (Rupees ten crores only).The offers shall be accompanied by a demand draft of earnest money of Rs.l0,00,00,000.

iii) The Advertisement shall contain interalia following mandatory conditions:

a) that the bidder shall not be allowed to participate in bids unless the earnest money is deposited before the due date.

b) The bidders shall be required to pay the balance of the price (after being given credit for Rs.l0,00,00,000 deposited as earnest money) within a period of 45 days from the date of confirmation of sale.

c) In the event of successful bidder failing to deposit the balance purchase price within a period of 45 days earnest money of Rs.l0,00,00,000 deposited shall be forfeited.

iv) In the event of the Asset Sale Committee receiving offer in excess of Rs. 40.50

crores it will be open for N.A Haris of Malapad Group and anr to participate in the bid and match the said offer.

v) In the event of N A Haris and Jawahar Gopal do not match the highest bid in auction the Prothonotary and Senior Master shall forthwith refund the sum of Rs.l0,00,00,000 (Rupees ten crores only) by drawing a demand draft in the name of Jawahar Gopal.

vi) In the event no offer higher than the reserved bid is received by the Asset Sale Committee by or before l5th November 2004 the provisional bid of N A Haris and Jawahar Gopal shall stand automatically accepted and confirmed without any further order. In which event the said N A Haris and Jawahar Gopal or their nominee/s shall pay the balance price of Rs.30,00,00,000 within a period of 45 days from l5th November 2004.

vii) On the said N A Haris and Jawahar Gopal or their nominee/s paying the balance price of Rs.30,00,00,000 within the period of 45

days as stated above the sale will be completed by Asset Sale Committee in favour of N A Haris and Jawahar Gopal or the person/s nominated by them.

viii) In the event of N A Haris and Jawahar Gopal or their nominee/s failing to pay the balance price of Rs.30,00,00,000 within the time stipulated as above the amount of Rs.l0,00,00,000 deposited by them shall stand forfeited.

ix) The Prothonotary and Sr Master is directed to refund forthwith draft of Rs.l0,00,00,000 to M/s RSJ Mega Hotels Pvt Ltd.

x) The Asset Sale Committee is directed to refund the amount of l% and 25% to Shri Ramaiah Reddy with interest at the rate of l5% p.a. from the date of deposit till refund.

x) The office is directed to keep the amount deposited by N A Haris and Jawahar Gopal invested in the Bank of Baroda, Bellard Pier Branch, Mumbai

xi) Notice of Motion Nos.565 of 2004 and No. of 2004 stand accordingly disposed of.

xii) Petition to be posted for further directions on l0.l2.2004.

Mr. D’vetre seeks stay of this order.

Application is rejected.